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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 EQUAL EMPLOYMENT
14 OPPORTUNITY COMMISSION,
15 Plaintiff,

16 v.

17 COVIUS SERVICES, LLC,
18 Defendant.

No. 2:23-CV-00186-TOR

STIPULATED PROTECTIVE
ORDER

19
20 1. PURPOSES AND LIMITATIONS

21 Discovery in this action is likely to involve production of confidential,
22 proprietary, or private information for which special protection may be warranted.
23 Accordingly, the parties hereby stipulate to and petition the court to enter the
24 following Stipulated Protective Order. The parties acknowledge that this agreement
25 is consistent with Fed. R. Civ. P. 5.2(e) and 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from
 2 public disclosure and use extends only to the limited information or items that are
 3 entitled to confidential treatment under the applicable legal principles, and it does
 4 not presumptively entitle parties to file confidential information under seal.

5 2. “CONFIDENTIAL” MATERIAL

6 “Confidential” material shall include documents, tangible things, discovery
 7 responses, testimony, information, or other material disclosed by parties or third
 8 parties that contain or disclose:

- 9 (a) physical health, mental health, or other healthcare information;
- 10 (b) personal demographic and identifying information, including but not
 11 limited to, social security numbers, birthdate, immigration information or status, or
 12 passport numbers;
- 13 (c) current home address for any party, witness, or potential witness;
- 14 (d) Defendant’s financial information and trade secrets, and copyrights
 15 and patents that are not already a matter of public record; and
- 16 (e) tax documents; and
- 17 (f) other material that is designated confidential by court order, by court
 18 rule, or by statute.

19 Non-party custodians may affirmatively choose to become bound by this
 20 order in producing documents, records, or testimony in this case. However, if a non-
 21 party custodian does not cooperate as required by section 4.3 or section 6.2 below,
 22 it waives confidentiality as to the designations at issue.

23 Documents that would be designated confidential solely because they contain
 24 information under section 2(b) or 2(c) above need not be designated “confidential.”
 25 Instead, the receiving party shall maintain the confidentiality of such information,

1 including personal demographic and identifying information or current home
2 address of any party, witness, or potential witness, contained within documents
3 produced in discovery as if it had been designated as confidential by the producing
4 party. When filing a document that is confidential solely because it contains
5 information under section 2(b) or 2(c) above, the receiving party must either follow
6 the procedure set forth in section 4.3 below *or* redact such information, such as the
7 personal demographic and identifying information or current home address of any
8 party, witness, or potential witness.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential
11 material (as defined above), but also (1) any information copied or extracted from
12 confidential material; (2) all copies, excerpts, summaries, or compilations of
13 confidential material; and (3) any testimony, conversations, or presentations by
14 parties or their counsel that might reveal confidential material.

15 However, the protections conferred by this agreement do not cover
16 information that is in the public domain or becomes part of the public domain
17 through trial or otherwise.

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1. Basic Principles. A receiving party may use confidential material that
20 is disclosed or produced by another party or by a non-party in connection with this
21 case only for prosecuting, defending, or attempting to settle this litigation.
22 Confidential material may be disclosed only to the categories of persons and under
23 the conditions described in this agreement. Confidential material must be stored and
24 maintained by a receiving party at a location and in a secure manner that ensures
25 that access is limited to the persons authorized under this agreement. Pages of

transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement.

4.2. Disclosure of Confidential Information or Items. Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Defendant's officers, directors, and employees to whom disclosure is reasonably necessary for this litigation;

(c) Plaintiff EEOC's attorneys, litigation support staff, and Enforcement Unit staff;

(d) the Charging Party Kelli Ebert;

(e) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) the Court, court personnel, and court reporters and their staff;

(g) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(h) witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),

1 unless otherwise agreed by the designating party or ordered by the Court;

2 (i) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information;

4 (j) mediators or other persons engaged in alternative dispute resolution
5 and their staff.

6 4.3. Filing Confidential Material. If any party intends to, or expects that it
7 may, file confidential information or documents with the Court for any reason, or
8 use confidential information or documents in any hearing or other Court
9 proceeding, that party may either:

10 (a) Give the party who designated the document or other information as
11 confidential three (3) days written notice (“Notice”), identifying the specific
12 information or documents the party intends or expects to file or use so as to permit
13 the designating party to decide, based on its good faith review of the identified
14 information and/or documents, whether to apply to the Court for an order to seal
15 such information or documents pursuant to Fed. R. Civ. P. 5.2, to allow the filing
16 party to file with stipulated redactions, or to rescind the confidential designation
17 entirely and file the entire document publicly. If any party believes that a document
18 or information was inappropriately filed under seal, they will agree to meet and
19 confer regarding the sealed document or information prior to seeking judicial
20 intervention regarding the dispute. If such a motion to seal is made, the party giving
21 Notice shall not file or use the confidential information or documents until the Court
22 has ruled on the motion; the party may, however, file pleadings with the Court
23 indicating that its filing will be supplemented as appropriate after the Court’s ruling
24 on the motion to seal; or

25 (b) If identification of the specific information or documents is not

possible three (3) days before filing or use, the party intending to file or use confidential information or documents will file a redacted version of the document that does not include the confidential information and will serve upon all other parties (and provide to the Judge's chambers) an unredacted version of the document so as to allow the designating party an opportunity to justify why such confidential information should be sealed pursuant to Fed. R. Civ. P. 5.2.

Where the Notice has been provided in connection with Subparagraph 4.3(a) above, or where a redacted document has been filed pursuant to this Subparagraph 4.3(b), the party wishing to file a motion to seal the confidential information shall so move within three (3) days of service of the Notice or motion. If no such motion is timely made, the party intending to use confidential information or documents can proceed with filing such information or documents unredacted.

4.4. EEOC Enforcement Activities. Notwithstanding the above provisions, the EEOC may use any information designated confidential in furtherance of its enforcement activities in any other matter in which the party designating such information as confidential has been named as a party, but it must treat such information as confidential until the confidential designation is withdrawn either by agreement of the designating party or by court order.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or documents for protection under this agreement must take care to limit any such designations to only those parts that qualify as confidential, such that other portions for which protection is not warranted are not unjustifiably included.

Mass, indiscriminate, or routinized designations are prohibited. Designations

1 that are shown to be clearly unjustified or that have been made for an improper
2 purpose (e.g., to unnecessarily encumber or delay the case development process or
3 to impose unnecessary expenses and burdens on other parties) expose the
4 designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it
6 designated for protection do not qualify for protection, the designating party must
7 promptly notify all other parties that it is withdrawing the mistaken designation.

8 5.2. Manner and Timing of Designations. The Parties will make reasonable
9 efforts to designate material as confidential before or when the material is disclosed
10 or produced. Inadvertent failure to designate information or documents as
11 confidential at the time of production pursuant to this Stipulation may be remedied
12 by supplemental written notice given by the designating party. Upon receipt of such
13 notification, all information, documents, materials, or testimony so designated or
14 re-designated shall be fully subject to this Stipulation as if they had been initially
15 so designated; provided, however, that the receiving party shall incur no liability
16 for any previous treatment or disclosure of such information or documents in
17 accordance with its original designation.

18 (a) Information in documentary form: Paper or electronic documents and
19 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
20 proceedings, shall be designated confidential by affixing the word
21 "CONFIDENTIAL" to each page that contains confidential material. If only a
22 portion or portions of the material on a page qualifies for protection, the producing
23 party may designate and produce the entire page as confidential and separately
24 produce an undesignated copy redacting the confidential portions.

25 (b) Testimony given in deposition or in other pretrial proceedings: the

1 parties and any participating non-parties must identify on the record, during the
 2 deposition or other pretrial proceeding, all protected testimony, without prejudice
 3 to their right to so designate other testimony after reviewing the transcript. Any
 4 party or non-party may, within thirty (30) days after receiving the transcript of the
 5 deposition or other pretrial proceeding, designate portions of the transcript, or
 6 exhibits thereto, as confidential. If a party or non-party desires to protect
 7 confidential information at trial, the issue should be addressed during the pre-trial
 8 conference.

9 (c) Other tangible items: the producing party must affix in a prominent
 10 place on the exterior of the container or containers in which the information or item
 11 is stored the word “CONFIDENTIAL.” If only a portion or portions of the
 12 information or item warrant protection, the producing party, to the extent
 13 practicable, shall identify the protected portion(s).

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1. Timing of Challenges. Any party or non-party may challenge a
 16 designation of confidentiality at any time by providing written notice to the
 17 designating party. Unless a prompt challenge to a designating party’s confidentiality
 18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
 19 economic burdens, or a significant disruption or delay of the litigation, a party does
 20 not waive its right to challenge a confidentiality designation by electing not to
 21 mount a challenge promptly after the original designation is disclosed.

22 6.2. Meet and Confer. The parties must make every attempt to resolve any
 23 dispute regarding confidential designations without court involvement. Any motion
 24 regarding confidential designations or for a protective order must include a
 25 certification, in the motion or in a declaration or affidavit, that the movant has

attempted in good faith to meet and confer with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3. Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the Court rules on the challenge.

7. PROTECTED MATERIAL IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as confidential, that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement and related Court Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 2 confidential material to any person or in any circumstance not authorized under this
 3 agreement, the receiving party must immediately (a) notify in writing the
 4 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
 5 all unauthorized copies of the protected material, (c) inform the person or persons
 6 to whom unauthorized disclosures were made of all the terms of this agreement and
 7 related Court Order, and (d) request that such person or persons execute the
 8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
 9 A.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED MATERIAL

11 When a producing party gives notice to receiving parties that certain
 12 inadvertently produced material is subject to a claim of privilege or other protection,
 13 the obligations of the receiving parties are those set forth in Fed. R. Civ. P.
 14 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
 15 established in an e-discovery order or agreement that provides for production
 16 without prior privilege review. The parties agree to the entry of a non-waiver order
 17 under Fed. R. Evid. 502(d).

18 10. NON-TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals, each
 20 receiving party must return all confidential material to the producing party,
 21 including all copies, extracts and summaries thereof. Alternatively, the parties may
 22 agree upon appropriate methods of destruction.

23 Notwithstanding this provision, counsel are entitled to retain one archival
 24 copy of all documents filed with the Court, trial, deposition, and hearing transcripts,
 25 correspondence, deposition and trial exhibits, expert reports, attorney work product,

1 and consultant and expert work product, even if such materials contain confidential
2 material. The parties acknowledge that this agreement does not affect the EEOC's
3 obligation to maintain copies of files pursuant to the Federal Records Act.

4 The confidentiality obligations imposed by this agreement shall remain in
5 effect until a designating party agrees otherwise in writing or a court order
6 otherwise.

7 DATED this 13th day of September, 2024.

8 EQUAL EMPLOYMENT
9 OPPORTUNITY COMMISSION

FISHER & PHILLIPS LLP

10 /s/Gregory A. Hitzel

/s/Dean Petitta

11 Roberta L. Steele

Suzanne K. Michael

12 Damien A. Lee

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17 Email: gregory.hitzel@eeoc.gov

Attorneys For Plaintiff

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
3 production of any documents in this proceeding shall not, for the purposes of this
4 proceeding or any other federal or state proceeding, constitute a waiver by the
5 producing party of any privilege applicable to those documents, including the
6 attorney-client privilege, attorney work-product protection, governmental
7 deliberative process privilege, or any other privilege or protection recognized by
8 law.

9 DATED: September 16, 2024.



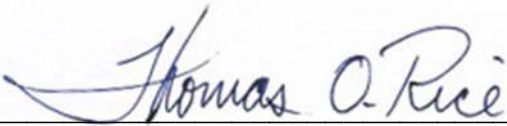

THE HONORABLE THOMAS O. RICE
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on [date] in the case of EEOC v. Covius Services, LLC, No.
2:23-CV-00186-TOR. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that
is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

Signature: _____

Name Printed: _____

City, State: _____